

Project 635 - Proposed

**DEPARTMENT OF MENTAL HEALTH, MENTAL RETARDATION AND SUBSTANCE
ABUSE SERVICES**

Amend the regulation to update and clarify process and requirements

CHAPTER 200

REGULATIONS FOR RESPITE AND EMERGENCY CARE ADMISSION TO MENTAL
RETARDATION FACILITIES STATE TRAINING CENTERS

12VAC35-200-10. Definitions.

The following words and terms when used in this chapter shall have the following meanings unless the context clearly indicates otherwise:

~~"Applicant" means a person for whom respite care or emergency care services are sought.~~

"Authorized representative" means a person permitted by law or regulations to authorize the disclosure of information or consent to treatment and services, including medical treatment, or for the participation in human research on behalf of an individual who lacks the mental capacity to make these decisions.

~~"Case management community services board (CSB)" or "CSB" means a citizens board established pursuant to §37.1-495 of the Code of Virginia that serves the area in which an adult resides or in which a minor's parent, guardian or legally authorized representative resides. The case management CSB is responsible for case management, liaison with the facility when an individual is admitted to a state training center, and predischarge planning. If an individual, or the parents, guardian or legally authorized representative on behalf of an individual, chooses to reside in a different locality after discharge from the facility, the community services board serving that locality becomes the case management CSB and works with the original case management CSB, the individual receiving services and the state facility to effect a smooth transition and discharge. For the purpose of these regulations, CSB also includes a behavioral health authority established pursuant to §37.2-602 of the Code of Virginia.~~

~~"Catastrophe" means an unexpected or imminent change in an individual's living situation or environment that poses a risk of serious physical or emotional harm to that individual.~~

~~"Commissioner" means the Commissioner of the Department of Mental Health, Mental Retardation and Substance Abuse Services.~~

~~"Discharge plan" or "predischarge plan" means a written plan prepared by the case management CSB in consultation with the state facility pursuant to §37.1-497.1 of the Code of Virginia. This plan is prepared when the individual is admitted to the facility and documents the planning for services after discharge.~~

~~"Emergency care admission" means the temporary placement of an individual with mental retardation in a facility when immediate care is necessary due to a catastrophe and no other community alternatives are available. The total number of days that emergency or respite care services, or both, are used shall not exceed 21 consecutive days or 75 days in a calendar year. This emergency care is not intended as a means of providing evaluation and program development services, nor is it intended to be used to obtain treatment of medical or behavioral problems.~~

"Facility" means a state training center for individuals with mental retardation under the supervision and management of the Commissioner of the Department of Mental Health, Mental Retardation and Substance Abuse Services.

~~"Guardianship~~ Guardian" means:

1. For minors -- ~~An~~ an adult who is either appointed by the court as a legal guardian of ~~said a~~ a minor or exercises the rights and responsibilities of legal custody by delegation from a biological or adoptive parent upon provisional adoption or otherwise by operation of law.
2. For adults -- a person appointed by the court who is responsible for the personal affairs of an incapacitated adult under the order of appointment. The responsibilities may include making decisions regarding the individual's support, care, health, safety, habilitation, education and therapeutic treatment. Refer to definition of "incapacitated person" at ~~§37.1-134.6~~ §37.2-1000 of the Code of Virginia.

"Individual" means a person for whom respite or emergency services are sought.

~~"Least~~ Less restrictive setting" means the ~~treatment and conditions of treatment that, separately or in combination, are~~ service location that is no more intrusive or restrictive of freedom than reasonably necessary to achieve a substantial therapeutic benefit and protection from harm (to self and others) based on an individual's needs.

~~"Legally authorized representative" means a person permitted by law or regulations to give informed consent for disclosure of information and give informed consent to treatment including medical treatment on behalf of an individual who lacks the mental capacity to make these decisions.~~

~~"Mental retardation" means the substantial subaverage general intellectual functioning that originates during the developmental period and is associated with impairment in adaptive behavior~~ a disability, originating before the age of 18 years, characterized concurrently by (i) significantly subaverage intellectual functioning as demonstrated by performance on a standardized measure of intellectual functioning, administered in conformity with accepted professional practice, that is at least two standard deviations below the mean; and (ii) significant limitations in adaptive behavior as expressed in conceptual, social, and practical adaptive skills.

~~"Respite care" means the placement of an individual with mental retardation in a state facility when placement is solely for the purpose of providing temporary care and supports to an individual with mental retardation because of medical or other urgent conditions of the caretaking person providing care. The total number of days that respite or emergency care services, or both, are used is not to exceed 21 consecutive days or 75 days in a calendar year. Respite care services are not intended as a means of providing evaluations and program development services, nor are they intended to be used to obtain treatment of medical or behavioral problems or both.~~

12VAC35-200-20. Respite care admission.

A. Applications for respite ~~care~~ in state facilities shall be processed through the case management CSB. A parent, guardian, or ~~legally~~ authorized representative seeking respite ~~care~~ services for an individual with mental retardation shall apply first to the CSB that serves the area where the applicant individual, or if a minor, his parent, or guardian, or ~~legally authorized representative~~ is currently residing. If the ~~case management~~ CSB determines that respite ~~care~~ services for the applicant individual are not available in the community, it shall forward an application to the facility serving individuals with mental

retardation from that geographic section of the state in which the applicant individual or his parent, or guardian, or legally authorized representative is currently residing.

The application shall include:

1. An application for services;
 2. A medical history indicating the presence of any current medical problems as well as the presence of any known communicable disease. In all cases, the application shall include any currently prescribed medications as well as any known medication allergies;
 3. A social history and current status;
 4. A psychological evaluation that ~~has been performed in the past three years unless the facility director or designee determines that sufficient information as to the applicant's abilities and needs is included in other reports received~~ reflects the individual's current functioning;
 5. A current individualized education plan for school aged ~~applicants~~ individuals unless the facility director or designee determines that sufficient information as to the ~~applicant's~~ individual's abilities and needs is included in other reports received;
 6. A vocational assessment for ~~adult applicants~~ adults unless the facility director or designee determines that sufficient information as to the ~~applicant's~~ individual's abilities and needs is included in other reports received;
 7. A statement from the ~~case management~~ CSB that respite ~~care~~ services for the applicant individual are not available in the community; ~~and~~
 8. A statement from the ~~case management~~ CSB that the appropriate arrangements ~~will be~~ are being made to return the individual to the CSB within the time frame required under this regulation; ~~and~~
 9. A statement from the individual, a family member, or authorized representative specifically requesting services in the facility.
- B. Determination of eligibility for respite ~~care~~ services shall be based upon the following criteria:
1. The applicant individual has a ~~primary~~ diagnosis of mental retardation and ~~functions on a level that~~ meets the facility's regular admission criteria;
 2. The ~~applicant's~~ individual's needs ~~for care and supervision~~ are such that, in the event of a need for temporary care, respite ~~care~~ services would not be available in a less restrictive setting; and
 3. The facility has appropriate resources to meet the ~~care and supervision~~ needs of the applicant individual.

~~Within a reasonable time of the receipt of the completed application~~ By the end of the next working day following receipt of a complete application package, the facility director, or his designee, shall provide written notice of his decision to the ~~case management~~ CSB. This notice shall state the reasons for the decision.

If it is determined that the applicant individual is not eligible for respite ~~care~~, the person seeking respite ~~care~~ services may ask for reconsideration of the decision by submitting a written request for such reconsideration to the commissioner. Upon receipt of such request, the commissioner or designee shall notify the facility director and the facility director shall forward the application packet and related information to the commissioner or designee within 48 hours. The commissioner or designee shall ~~also~~ provide an opportunity for the person seeking respite ~~care~~ services to submit for

consideration any additional information or reasons as to why the admission should be approved. The commissioner shall render a written decision on the request for reconsideration within 10 days of the receipt of such request and notify all involved parties. The commissioner's decision shall be binding.

C. Respite care ~~is~~ shall be provided in state facilities under the following conditions:

1. The length of the respite care stay at the facility shall not exceed 24 consecutive days or a total of 75 days in a calendar year the limits defined in §37.2-807 of the Code of Virginia;

~~2. Information on file at the facility is current;~~

~~3. 2.~~ Space and adequate staff coverage are available on a unit with an appropriate peer group for the applicant individual and suitable resources to meet his ~~care and supervision~~ needs; and

~~4. 3.~~ A physical examination performed by the facility's health service personnel at the time of the respite care admission has determined that the applicant's individual's health care needs can be met by the facility's resources during the scheduled respite care stay.

If for any reason a person admitted for respite care services is not discharged at the agreed upon time, the ~~case management~~ CSB shall develop a an updated discharge plan as provided in ~~§§37.1-98 and 37.1-197.1~~ §§37.2-837 and 37.2-505 of the Code of Virginia.

Respite care shall not be used as a mechanism to circumvent the standard admissions procedures as provided in ~~§37.1-65.1~~ §37.2-806 of the Code of Virginia. No person who is admitted to a training center ~~in response to~~ under the provisions of this chapter shall, during the time of such respite care admission, be eligible for admission to any training center ~~in response to §37.1-65.1~~ under §37.2-806 of the Code of Virginia.

12VAC35-200-30. Emergency care admission.

A. In the event of a ~~catastrophe~~ change in an individual's circumstances necessitating immediate, short-term care for an individual with mental retardation, emergency care admission may be requested by a parent, guardian, or legally authorized representative by calling the ~~case management~~ CSB. If the ~~case management~~ CSB determines that respite care services for the applicant individual are not available in the community, it may request an emergency admission to the facility serving that geographic area in which the applicant individual, or in case of a minor, his parent, or guardian, or legally authorized representative resides.

The ~~case management~~ CSB shall make every effort to obtain the same case information required for respite care admissions, as described in 12VAC35-200-20 A, before assuming responsibility for the care of the individual in need of emergency services. However, if the information is not available, this requirement may temporarily be waived if, and only if, arrangements have been made for receipt of the required information within 48 hours of the emergency care admission.

B. Acceptance for emergency care ~~admissions~~ admission shall be based upon the following criteria:

1. A ~~catastrophe~~ change in the individual's circumstances has occurred requiring immediate alternate arrangements to protect the individual's health and safety;

2. The individual has a primary diagnosis of mental retardation and ~~functions on a level that~~ meets the facility's regular admissions criteria;

3. All other alternate care resources in the community have been explored and found to be unavailable;
4. Space is available on a unit with appropriate resources to meet the individual's ~~care and supervision~~ needs;
5. The facility's health services personnel have determined that the individual's health care needs can be met by the facility's resources; and
6. The length of the emergency ~~care~~ stay at the facility will not exceed 24 ~~consecutive days or a total of 75 days in a calendar year~~ the limits defined in §37.2-807 of the Code of Virginia.

C. Within 24 hours of receiving a request for emergency ~~care~~ admission, the facility director, or his designee, will inform the ~~case management~~ CSB whether the ~~applicant~~ individual is eligible for emergency care and whether the facility is able to provide emergency ~~care~~ services.

If the facility is able to provide emergency ~~care~~ services, arrangements shall be made to effect the admission as soon as possible.

If the facility is unable to provide emergency care services to an eligible ~~applicant~~ individual, the facility director or designee shall provide written notice of this determination to the ~~case management~~ CSB and may offer to try to obtain emergency ~~care~~ services from another appropriate facility.

If for any reason a person admitted to a facility for emergency ~~care~~ services is not discharged at the agreed upon time, the ~~case management~~ CSB shall develop a discharge plan as provided in ~~§§37.1-98 and 37.1-197.1~~ §§37.2-505 and 37.2-837 of the Code of Virginia.